

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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DISTRICT OF NEW MEXICO

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WILDEARTH GUARDIANS and  
WESTERN WATERSHEDS PROJECT

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as  
Secretary, United States Department of the  
Interior,

Defendant.

Civil Action No. 10-cv-86-ACT-RHS

**STIPULATED SETTLEMENT  
AGREEMENT**

The parties to the above-captioned action, by and through their undersigned counsel,  
hereby state as follows:

WHEREAS on October 15, 2008, the captioned Plaintiffs submitted a petition to the U.S.  
Fish and Wildlife Service ("Service") to list the Sonoran desert tortoise as threatened or  
endangered under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et. seq.*; and

WHEREAS on February 2, 2010, Plaintiffs filed a Complaint for declaratory and  
injunctive relief pursuant to the citizen suit provision of the ESA, 16 U.S.C. §§ 1540(c) & (g),  
alleging a failure to timely issue a 12-month finding on Plaintiffs' petition pursuant to 16 U.S.C.  
§ 1533 (b)(3)(A); and

WHEREAS the parties, through their authorized representatives, and without any  
admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have  
reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the  
disputes set forth in Plaintiffs' Complaint; and

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The U.S. Fish and Wildlife Service ("Service") shall submit for publication in the Federal Register a 12-month finding pursuant to 16 U.S.C. § 1533(b)(3)(B) on or before December 5, 2010.

2. Upon approval of this Agreement by the Court, all counts of Plaintiffs' Complaint shall be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1).

3. Plaintiffs and Defendant, by and through their undersigned counsel, hereby agree and stipulate that Defendant shall pay the total sum of \$9,500 to settle and resolve Plaintiffs' claims for attorney fees and litigation costs, pursuant to the ESA, 16 U.S.C. §1540(g)(4). Such payment shall fully and finally resolve any and all claims that Plaintiffs might have for recovery of attorney fees or litigation expenses in this matter as of the date of this Stipulated Settlement Agreement. By this Agreement, Plaintiffs do not waive any right to seek compensation for attorneys' fees and costs, and Defendant does not waive any right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including the hourly rate, in any future litigation, or continuation of the present action.

4. Plaintiffs agree to furnish Defendant with the information necessary to effectuate payment pursuant to paragraph 3 and to hold the United States harmless for any loss caused by following this authorization and direction, if any loss should occur. Defendant agrees to submit all appropriate paperwork to process Plaintiffs' fee award to the U.S. Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. §1540(g)(4), within ten (10) days of

receiving the signed Order approving this agreement and the necessary paperwork from Plaintiffs, whichever is later.

5. The parties agree and acknowledge that this settlement is a compromise to avoid further litigation only and has no precedential value as to the merits of any claims or as to attorneys' fees and costs.

6. Nothing in this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that the Defendant take actions in contravention of the ESA or any other law or regulation, either substantive or procedural.

7. Nothing in this agreement relieves Defendant of its obligation to act in a manner consistent with applicable federal, state, or local law, and applicable appropriations law. No provision of this Agreement shall be interpreted as a commitment or requirement that Defendant obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

8. The parties agree that this Agreement was negotiated in good faith and it constitutes a settlement of claims that were vigorously contested, denied, and disputed by the parties. By entering into this Agreement, the parties do not waive any claim or defense.

9. The undersigned representatives certify that they are fully authorized by the parties they represent to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

10. The terms of this Agreement shall become effective upon entry of an order by the Court ratifying this Agreement and incorporating the terms of this Agreement into a stipulated Order of Dismissal to be jointly submitted by the parties.

DATED this 15<sup>th</sup> day of April, 2010.

/s/ Steven Sugarman  
STEVEN SUGARMAN  
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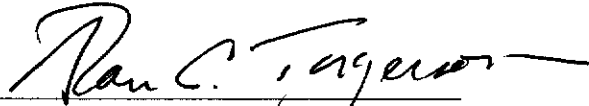
*Attorney for WildEarth Guardians  
and Western Watersheds Project*

DATED this 15<sup>th</sup> day of April, 2010.

/s/ Robert P. Williams  
ROBERT P. WILLIAMS, Trial Attorney  
D.C. Bar No. 474730  
U.S. Department of Justice  
Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
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*Attorney for Federal Defendant*

PURSUANT TO STIPULATION, IT IS SO ORDERED

  
\_\_\_\_\_  
United States District Judge  
*Magistrate*  
*Presiding by Consent*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2010, the foregoing will be electronically filed with the Clerk of Court using the CM/ECF system, which will generate automatic service of such filing upon all parties registered to receive such notice, including the following email addresses:

stevensugarman@hotmail.com

/s/ Robert P. Williams  
ROBERT P. WILLIAMS, Trial Attorney